



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

5w

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,351	07/03/2003	Bruno Guillaume	08291-710003M / 10729P2	7293

7590

12/28/2004

Frederick H. Rabin
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110

EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,351

Applicant(s)

GUILLAUME ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/3/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: On page 17, line 25, "inner compartment 92" should be --inner compartment 93--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1 and 6-13 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The structure defined in claims 1 and 11 has not been enabled by the specification, i.e., claims 1 and 11 define a structure having a restricted outlet (forming an applicator in claim 1), a removable closure for the outlet and a dividing wall, however no embodiment discloses all of these features. The embodiment in Figure 1 discloses the restricted outlet forming an applicator and a removable closure while the embodiment in Figure 3 discloses the claimed dividing wall. Further, claim 6 defines a removable applicator wherein the disclosure of the embodiment in Figure 3 does not define the applicator 37 as being removable. In regard to claim 8, the specification does not enable a device that includes both a restricted outlet in the form of an applicator and

a roller or roller ball. It appears that the Applicant has incorporated the features of various embodiments in one claim. Clarification is needed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaudhri et al. (hereinafter Chaudhri) in view of Yaneza. In regard to claims 1 and 11, Chaudhri discloses a container for dispensing material comprised of a first compartment 34 for location of a solid material 32 (toothpaste, which will melt to liquid at an elevated temperature), a second compartment 54 in "thermal communication" with the first compartment for receiving a liquid 56 wherein the first and second compartments are isolated from each other such that the material and liquid cannot mix, a removable closure 58 covering an inlet in the second compartment, a restricted outlet in the form of an applicator 22 connected to the first compartment and a dividing wall 40 connected to an outer wall of the container to thereby divide the container into two end-to-end compartments. It is noted that the statements of intended use, i.e., "for receiving a hot liquid" and "for prolonged dispensing of heated liquid material" do not lend any patentable structure to the claims. Further, the Chaudhri device is capable of operating in the manner defined in the claims, i.e., should a readily meltable material be placed in


the first compartment and a hot enough liquid be placed in the second compartment, the heat would transfer from the second compartment to melt the material in the first compartment. Although the Chaudhri device does not include a removable closure over the outlet in the first compartment, attention is directed to the Yaneza reference, which discloses another toothbrush wherein a removable enclosure 13 is positioned over the applicator in order to protect the applicator when not in use. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such an enclosure over the outlet/applicator in the Chaudhi device in order to protect the bristles when not in use. In regard to claim 6, the applicator is removable (via threads 42, 44 which would allow the introduction of material into the first compartment. In regard to claim 7, the applicator includes a narrow elongated slot 26, 28 through which material is dispensed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
12/21/04